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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ROMMEL V. SAN PEDRO,

Plaintiff and Appellant,

v.

LOWELL MENORCA II,

Defendant and Respondent.

G058050

(Super. Ct. No. 30-2017-00964285)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gregory H. Lewis, Judge. Reversed.

Manning & Kass, Ellrod, Ramirez, Trester LLP, Dennis B. Kass, David R. Ruiz and Steven J. Renick for Plaintiff and Appellant.

Law Offices of Seth W. Wiener and Seth W. Wiener for Defendant and Respondent.

INTRODUCTION

When the United States Supreme Court issued its unanimous decision on personal jurisdiction in *Walden v. Fiore* (2014) 571 U.S. 277 (*Walden*), it recognized that it was “leav[ing] . . . for another day” the question of how its holding might be applied to “virtual contacts” with the forum state. (*Id.* at p. 290, fn. 9.) For us, at least, that day has come and gone. Less than a year after the *Walden* case, we decided *Burdick v. Superior Court* (2015) 233 Cal.App.4th 8 (*Burdick*), in which we found that personal jurisdiction could not be asserted against a nonresident defendant based on internet postings that did not expressly target California. But this day requires us to consider again whether internet postings can constitute contacts sufficient to justify the exercise of jurisdiction. This time, the postings *do* explicitly target California. The trial court thought the evidence presented to it was insufficient to justify jurisdiction. We disagree and reverse.

FACTS

Appellant Rommel V. San Pedro is a Minister in the Church of Christ, also called “Iglesia Ni Cristo,” or “INC,” which he describes as a “global religious organization with offices and congregants across the United States.” INC’s legal department has offices in California and Washington, D.C. San Pedro is also a member of the California bar as well as INC’s corporate lawyer, and part of his practice for INC entails work in California courts.

By January 2017, San Pedro had found himself the subject of online postings on a website called “Iglesia Ni Cristo Silent No More.” These postings were created or attributed to an individual or individuals using the name “Antonio Ebangelista,” and San Pedro asserts that they were disseminated on multiple social media sites, including Facebook, Twitter, Instagram, and Google. The name “Antonio Ebangelista,” or more fully, “Antonio Ramirez Ebangelista,” is described on the website as a pseudonym “for a Minister working in a high-level secured Office in the [INC]

Central Complex” whose writings “aim[]” to “expos[e] the alleged corruption inside” the organization.

Two of the postings by “Antonio Ebangelista” are featured in San Pedro’s complaint. The first, entitled “Deciphering the E.V.M. Henchmen Code,” is dated July 11, 2017. This lengthy post generally accuses INC, and certain figures within its hierarchy, of committing crimes with impunity and attempting to silence critics; it refers to many individuals who are not named or identified in the complaint. On page six of the post, Ebangelista states that INC employs certain individuals as so-called “‘go-to’ guy[s]” to utilize the legal system to further the organization’s agenda. He calls these “go-to guys” “two-faced lying lawyers” who require only nominal professional skill due to INC’s allegedly outsized influence in the Philippine court system. San Pedro is identified by Ebangelista as a “‘go-to’ guy.”

The second posting of relevance occurred on or about January 26, 2017, and was titled “FEATURING O.W.E. ROMMEL V. SAN PEDRO’S 4TH(!!!) HUMILIATING DEFEAT IN U.S. COURTS”. This posting describes two California court cases in which San Pedro represented INC-associated figures and lost, and it mocks his allegedly deficient legal skills. Ebangelista also makes the following statement: “We encourage all the brethren, especially in California, to be legal-wise. Do not be intimidated no matter how menacing Bro. Rommel San Pedro looks” He goes on to assert that San Pedro is in danger of being disbarred in California, insinuating that it is due to “all [of] his” perceived “legal blunders.”

Unaware of Ebangelista’s identity, San Pedro filed his initial complaint in December 2017 for defamation and invasion of privacy by false light against “John Doe a/k/a ‘Antonio Ebangelista’” and began taking discovery. In the course of that discovery, on August 10, 2018, a deponent named Julie Sales testified that respondent Lowell Menorca had confessed to her that he was Ebangelista.

Menorca is a self-proclaimed “former unordained minister” of INC who lived in the Philippines. He claims he was “expelled from INC in 2015 and abducted by [its] members” because of his “online exposes of corruption” in the organization; persecuted by INC, he sought, and was granted, refuge in Canada in 2016. On January 18, 2019, San Pedro added Menorca’s name to the complaint. In early March 2019, Menorca was served in British Columbia.

Menorca timely filed a special appearance, moving to quash service of summons based on lack of personal jurisdiction. While he never outright denied having posted any content under the name Antonio Ebangelista, he claimed he had no connections to the State of California, had “never published any false statements” about San Pedro, and had never directed his online postings to a California audience. In opposition, San Pedro presented his own declaration, along with that of his counsel, which attached relevant excerpts from Julie Sales’ deposition testimony. However, neither of these declarations was signed under penalty of perjury under the laws of the State of California, as required by Code of Civil Procedure section 2015.5.

Menorca pointed out this flaw in his reply brief. In its tentative ruling, issued five days prior to the hearing, the trial court agreed that the flaw rendered the declarations inadmissible and that San Pedro had thus failed to carry his burden to show that jurisdiction was proper. But the court did not leave the issue there – it went on to consider the declarations on their merits, concluding that they failed to “sufficiently establish” that Menorca aimed or directed his conduct expressly at California. In doing so, the trial court relied on our decision in *Burdick*, as well as *ViaView, Inc. v. Retzlaff* (2016) 1 Cal.App.5th 198 (*ViaView*). On the day the tentative ruling was issued, San Pedro submitted notices of errata, attaching correctly certified versions of the opposing declarations. At the hearing five days later, San Pedro advised the court that the corrected declarations had been submitted. Despite this, the tentative ruling was entered as the final ruling.

DISCUSSION

On appeal, San Pedro raises three errors. First, he contends the trial court abused its discretion when it refused to consider the corrected declarations he submitted prior to the hearing. Second, he argues the declarations and exhibits he submitted sufficiently demonstrate Menorca directed his conduct at the state of California. Finally, he maintains he should have been given time to conduct discovery on the jurisdictional issue.

A. The Defective Declarations

We can easily dispose of San Pedro's first contention. The record reflects the trial court considered the substance of the corrected declarations in making its ruling, even if it found the originally submitted ones inadmissible. San Pedro states, and our review corroborates, that the corrected declarations were the same as the originally submitted ones, aside from the corrected certification language.¹ At the hearing on Menorca's motion, San Pedro's counsel directed the trial court's attention to the corrected declarations. The trial court responded: "even if the declarations were submitted under penalty of perjury, . . . the evidence contained in those declarations do[es] not sufficiently evidence that Menorca expressly aimed or directed his conduct to California." So the trial court did not refuse to consider the corrected declarations. It just did not believe their contents – certified or not – were enough to meet San Pedro's burden. That is a question we take up shortly.

Before we leave the topic of the declarations, however, we must address the import of *ViaView*, a case to which Menorca drew both the trial court's attention and ours. (*ViaView*, *supra*, 1 Cal.App.5th at pp. 218-219.) As it happens, we find *ViaView* both analogous and distinguishable in ways that do not favor Menorca. In that case, a nonresident defendant allegedly threatened a California plaintiff and his company in

¹ For this reason, we deny San Pedro's request for judicial notice of the lower court's law and motion procedures.

social media postings and e-mails, even publishing plaintiff's California address online, suggesting readers should go there and attack plaintiff and his family. (*Id.* at pp. 205-206.) Plaintiff sought a restraining order against defendant, and after service was finally effectuated on him, defendant filed a motion to quash based on lack of personal jurisdiction. (*Id.* at p. 206.) In opposition, the plaintiff filed a declaration that was not signed under penalty of perjury as required by Code of Civil Procedure section 2015.5. (*ViaView*, *supra*, 1 Cal.App.5th at p. 206.) This defect was not raised in the trial court, but the appellate court nonetheless refused to consider the declaration because the defect negated its "evidentiary value." (*Id.* at p. 217.) Because the defendant had submitted an admissible declaration attesting to his lack of connection with California, and there was no admissible evidence from the plaintiff to refute it or show that defendant had done what was alleged, the appellate court ordered the trial court to vacate its order denying the motion to quash. (*Id.* at pp. 217-220.)

This case presents a somewhat similar factual scenario with a much different procedural history. Like Menorca, the defendant in *ViaView* appeared to have targeted both the plaintiff and the State of California in his postings. But the *ViaView* court never reached that issue because of the problems in plaintiff's evidence. We are left to wonder what the *ViaView* court would have concluded regarding jurisdiction had the plaintiff's evidence passed muster. Here, even though San Pedro initially submitted defective declarations, he later corrected them, and the trial court appears to have considered them as corrected.² We do not face the same impediment as the *ViaView* court in assessing the declarations on their substance.

² This fact also renders Menorca's other cited case on this point, *Kulshrestha v. First Union Commercial Corporation* (2004) 33 Cal.4th 601 (*Kulshrestha*), distinguishable. The plaintiff in *Kulshrestha* did not try to submit corrected declarations until after the trial court had heard and ruled on the motion. (*Id.* at pp. 607-608.)

B. Personal Jurisdiction

When there are factual disputes as to evidence in the record, “we accept the trial court’s resolution of factual issues, draw all reasonable inferences in support of the trial court’s order, and review the trial court’s determination of factual issues for substantial evidence.” (See *Burdick, supra*, 233 Cal.App.4th at p. 17.) If the evidence is in dispute, we undertake a de novo review of the personal jurisdiction issue. (*Ibid.*)

Menorca objected to San Pedro’s evidence in opposition to the motion to quash, but the trial court never ruled on any objections aside from the ones based on Code of Civil Procedure section 2015.5. Menorca did not explicitly seek rulings on the remainder of the objections. Nevertheless, we may rule on the admissibility of any evidence relevant to our analysis. (See *Floveyor Internat., Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 796.)

“To comport with federal and state due process, California may only exercise jurisdiction when a defendant has sufficient minimum contacts with the state to satisfy “traditional notions of fair play and substantial justice.” [Citations.]” (*Zehia v. Superior Court* (2020) 45 Cal.App.5th 543, 552 (*Zehia*); see also Code Civ. Proc., § 410.10 [“A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.”].) As we set out to make this determination, we first recognize that “[p]ersonal jurisdiction may be either general or specific.” (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 445 (*Vons*)). Here, the parties’ dispute focuses on specific jurisdiction,³ to which we apply a basic three-pronged test. “A court may exercise specific jurisdiction over a nonresident defendant only if: (1) ‘the defendant has purposefully availed himself . . . of forum benefits’ [citation]; (2) ‘the “controversy is related to or ‘arises out of’ [the] defendant’s

³ San Pedro has not discussed general jurisdiction in his opening brief, and we consider any argument on that topic waived. (See *Employers Mutual Casualty Co. v. Philadelphia Indemnity Ins. Co.* (2008) 169 Cal.App.4th 340, 349-350.)

contacts with the forum” [citations]; and (3) “the assertion of personal jurisdiction would comport with ‘fair play and substantial justice’” [citations].” (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269 (*Pavlovich*)). A key element of our “inquiry . . . ‘focuses on “the relationship among the defendant, the forum, and the litigation.”’” (*Walden, supra*, 571 U.S. at p. 284.)

1. Purposeful Availment

In a defamation case such as this, purposeful availment can be demonstrated by application of the effects test stated in *Calder v. Jones* (1984) 465 U.S. 783, 789 (*Calder*). (See *HealthMarkets, Inc. v. Superior Court* (2009) 171 Cal.App.4th 1160, 1172, citing *Pavlovich, supra*, 29 Cal.4th at pp. 269, 272.) Under this test, “intentional conduct” in another state may give rise to jurisdiction in California where it is “calculated to cause injury . . . in California.” (*Calder, supra*, 465 U.S. at p. 791.) In *Pavlovich*, the California Supreme Court opined that the *Calder* effects test requires more than a defendant’s mere awareness that his conduct might cause harm in California. (*Id.* at p. 278.) Rather, the defendant must also expressly aim or target his conduct toward California. (*Id.*, p. 271; see also *Walden, supra*, 571 U.S. at p. 286 [“A forum State’s exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts with the forum.”]; *Zehia, supra*, 45 Cal.App.5th at p. 557 [defendant’s contacts target the forum when they are “the foreseeable results of his ‘intentional conduct.’ [Citation.]”].)

The facts of *Calder*, *Walden*, and *Pavlovich* provide useful illustrations of how the effects test is applied. In *Calder*, a California television personality sued a publication, its editor, and one of its reporters for libel, invasion of privacy, and intentional infliction of emotional harm after defendants published an article insinuating she had a drinking problem that interfered with her professional life. (*Calder, supra*, 465 U.S. at pp. 785, 788, fn. 9.) Evidence in the record indicated the publication had its highest level of circulation in California. (*Id.* at p. 785.) The article drew from

California sources, and the plaintiff suffered reputational harm in California, where her career was centered. (*Id.* at pp. 788-789.) The United States Supreme Court found that jurisdiction over the Florida-based defendants was proper because California was “the focal point both of the story and of the harm suffered.” (*Id.* at p. 789.)

The effects test produced a different but consistent result in *Walden* 30 years later. In that case, the United States Supreme Court concluded a Nevada court lacked personal jurisdiction over a Georgia police officer who had seized suspected drug cash from two Nevada residents while they were in transit through Atlanta’s airport on their way home. (*Walden, supra*, 571 U.S. at pp. 279-280.) After the plaintiffs had departed, the officer received communications from their attorney in Nevada, who asserted that the funds were legally acquired and sought to reclaim them. The officer helped prepare an affidavit to show probable cause for forfeiture of the cash and forwarded it to the U.S. Attorney’s office in Georgia. The plaintiffs claimed the affidavit was false and sued the officer in Nevada for violating their Fourth Amendment rights. (*Id.* at pp. 280-281.) The court held these facts did not support jurisdiction because the only ties to the forum state were through the *plaintiffs*, not through defendant’s own conduct toward the state. (*Id.* at pp. 288-289.)

Unlike *Walden*, which it preceded, *Pavlovich* was an internet-related case. There, the defendant, a Texas resident, had posted source code for a DVD encryption technology on the internet. Plaintiff, a DVD industry group, held the licensing rights to this technology and sued defendant for trade secret misappropriation. (*Pavlovich, supra*, 29 Cal.4th at pp. 266-267.) The California Supreme Court determined there was insufficient evidence that defendant ever targeted California. He had simply posted information on the internet, with an awareness that posting such information could harm California residents and industries. (*Id.* at p. 277.)

In *Burdick*, we applied the effects test as articulated in *Calder*, *Pavlovich*, and *Walden* and found jurisdiction lacking. (*Burdick, supra*, 233 Cal.App.4th at p. 25.)

That case involved an Illinois defendant who took to his personal Facebook page to write disparaging comments that were reasonably understood to refer to the California plaintiffs. (*Id.* at pp. 13-15.) After undertaking an extensive review of *Calder* and its progeny, including *Pavlovich*, we found a lack of evidence the Illinois defendant had expressly aimed or targeted the offending comments at California. The posting itself did not expressly target or mention California, and the plaintiffs had not produced evidence the Facebook page reached a significant number of Californians. (*Burdick, supra*, 233 Cal.App.4th at p. 25.)

After the opening and responding briefs in this matter had been filed, the Fourth District Court of Appeal, Division One, issued its opinion in *Zehia*. In that case, a Michigan resident allegedly attempted to disrupt a budding relationship between two California residents by sending misleading private social media messages to both. (*Zehia, supra*, 45 Cal.App.5th at 547-549.) Some of the messages discussed one individual's reputation with women in San Diego, and other messages discussed the two individuals' introduction, which took place in San Diego. (*Id.* at p. 557.) The appellate court ruled there was sufficient evidence to support specific jurisdiction because the defendant had sent "California-focused messages and conversations directly to California residents for the alleged purpose of interfering with the relationship of California residents and causing reputational injury in California[.]" (*Id.* at p. 558.) The court noted that "defamatory content with a *forum-related focus* strengthens the connection between a nonresident tortfeasor's conduct and the forum." (*Id.* at pp. 557-558, italics added.)

From the above cases, we believe we've distilled the rule that best aligns the facts of this case with the rules of *Calder* and *Zehia*. Like both of those cases, this is a defamation case, in which San Pedro was the subject and focal point of Menorca's conduct. A witness testified Menorca had admitted to being Antonio Ebangelista.⁴ Like

⁴ While Menorca objected to this testimony as hearsay, it constitutes a party admission, and is thus admissible. (See Evid. Code, §1220.)

the defendant in *Zehia*, Menorca's words were expressly aimed at a California audience, even though the record is unclear whether Californians read the posting. Unlike the Facebook post in *Burdick*, which explicitly mentioned neither the plaintiffs nor California, the second posting by Ebangelista was aimed, by its own verbiage, toward California. Ebangelista identified San Pedro as a California lawyer in danger of losing his state law license, highlighted his alleged failures in California lawsuits, and warned California INC followers about him, a thinly-veiled adjuration against hiring him. Ebangelista did so even though San Pedro is, according to the record, a licensed attorney in four other jurisdictions besides California, none of which was named in the post. This evidence meets the express aiming and targeting requirement.

California also was the focal point of the alleged harm. San Pedro averred in his declaration that his legal reputation in California, as well as the reputation of INC's California legal department, has suffered a blow as a result of the postings. Indeed, it stands to reason that attacking San Pedro's lawyering record *in California* would have greatest impact for readers in California, who might seek San Pedro's services. Thus, like *Zehia*, the content is California-focused, it targets California readers, and it caused harm to the plaintiff's California reputation.

Menorca makes another related point about what he perceives to be a requirement of intentionally tortious conduct. While we consistently observed in *Burdick* that the *conduct* of the defendant must be intentional, we characterized the post-*Calder* jurisdictional inquiry as including a requirement that "the defendant commit[] an intentional tort" (*Burdick, supra*, 233 Cal.App.4th at pp. 19-20, citing *IMO Industries, Inc. v. Kiekert AG* (3d Cir. 1998) 155 F.3d 254, 265-266 (*IMO*)). Relying on this language, Menorca attacks the merits of San Pedro's case, claiming he has failed to establish each element of defamation. We find this contention misplaced.

The purposeful avilment analysis does not hinge on whether the defendant's conduct is actually tortious. The *Pavlovich* court favorably cited *IMO* not to

endorse the use of the word “tort,” but to note widespread support for the requirement of aiming or targeting as an important part of the effects test. (*Pavlovich, supra*, 29 Cal.4th at pp. 270-272.) We cited *IMO* for a similar purpose in *Burdick*. (*Id.* at p. 20.) The substantive merits of plaintiff’s claim are irrelevant unless “the record tends unequivocally to establish that the defendant’s conduct did not cause [tortious] effects” in the forum state. (See *J. M. Sahlein Music Co. v. Nippon Gakki Co., Ltd.* (1987) 197 Cal.App.3d 539, 545 (*Sahlein*).) In *Sahlein*, the only evidence of conduct by the nonresident defendant tended to disprove the plaintiff’s claim. (*Id.* at p. 545.) Here, a sufficient evidentiary basis has been shown: the posting by Ebangelista attacks San Pedro’s professional and personal reputation in California, and there is admissible evidence that Menorca is Ebangelista.

2. Related Controversy

The lawsuit against Menorca is directly related to his conduct targeting the forum – that is, his internet posting – and so this element of the jurisdictional test is easily met. Menorca does not argue otherwise.

3. Fair Play and Substantial Justice

Once the court has determined that the defendant has sufficient minimum contacts with the forum state, “these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with ‘fair play and substantial justice.’” (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 476 (*Burger King*).) These other factors are “the burden on the defendant of appearing in the forum, the forum state’s interest in adjudicating the claim, the plaintiff’s interest in convenient and effective relief within the forum, judicial economy, and ‘the “shared interest of the several States in furthering fundamental substantive social policies.”’ [Citation.]” (*Vons, supra*, 14 Cal.4th at p. 448.)

Menorca contends that these factors do not weigh in favor of jurisdiction, for several reasons. He says he will be substantially burdened by the expense of having

to defend the suit in California and assertion of jurisdiction would conflict with the Canadian government's determination that he needed protection from INC and its associates. He also claims that, because San Pedro is not a California resident, the state has little interest in his case, and there is no fundamental social policy advanced by it.

We are not persuaded. First, "a defendant who purposefully has directed his activities at forum residents . . . must present a *compelling* case that the presence of some other considerations would render jurisdiction unreasonable. Most such considerations usually may be accommodated through means short of finding jurisdiction unconstitutional." (*Burger King, supra*, 471 U.S. at p. 477, italics added.) Menorca's financial burden in defending this lawsuit is the burden any litigant must bear. There is no evidence in the record that Menorca would be at a "severe disadvantage" in comparison to his opponent" due to his financial situation. (*Id.* at p. 478.)

Second, Menorca's concern about the exercise of jurisdiction against a foreign national with refugee status in Canada is, in our estimation, overstated. Menorca draws a parallel between this case and *Asahi Metal Ind. v. Super. Ct. of Cal., Solano Cty.* (1987) 480 U.S. 102 (*Asahi*). But *Asahi* involved a foreign defendant who had not purposefully directed its activities toward California. Instead, the foreign defendant in *Asahi* had manufactured a product that ended up in California through the ordinary stream of commerce. Under those circumstances, the United States Supreme Court was uncomfortable placing "serious burdens on [the] alien defendant" where the interests of the plaintiff or forum state were "minimal." (*Id.* at p. 115.) The high court cautioned that "[g]reat care and reserve" was warranted when jurisdiction was being extended to foreign defendants. (*Ibid.*)

Here, the calculus is changed because, in targeting California with his conduct, Menorca could fairly expect to have been held "answerable on a claim related to those activities." (*Keeton v. Hustler Magazine, Inc.* (1984) 465 U.S. 770, 776 (*Keeton*).) And exercising jurisdiction would not appear to conflict with his refugee status in

Canada. After all, he claims to have fled the Philippines, not California. He was granted refuge to protect him from threats to his life, not to shield him from the legal ramifications of his own conduct.

Menorca's focus on San Pedro's residency is also unavailing. A plaintiff's contacts with the forum should not "drive the jurisdictional analysis." (*Walden, supra*, 571 U.S. at p. 289.) But even if San Pedro resides elsewhere, that alone will not defeat jurisdiction if Menorca has minimum contacts with the forum. This would be so even if the bulk of the reputational harm to San Pedro occurred in his home state, rather than in California. (*Keeton, supra*, 465 U.S. at p. 780.) But, as a practical matter, we are satisfied that an active California lawyer such as San Pedro has a direct interest in his personal and professional reputation within this state.

We also disagree with Menorca's contention that San Pedro's lawsuit furthers no fundamental social policy because of INC's alleged penchant for suing those who speak out against it. The lawsuit is brought by San Pedro, not INC. The State of California has an interest in adjudicating claims regarding the professional activities of its lawyers, including San Pedro. And the law of defamation has arisen out of the understanding that false attacks on an individual's personal or professional reputation can have concrete and serious impacts on the individual's career, livelihood, and social standing within the community. The failure to distinguish a lawyer from his client is a falling we will not be lured into.

We hold that there was sufficient evidence to support the exercise of personal jurisdiction over Menorca under the *Calder* effects test.

C. Jurisdictional Discovery

Because we conclude that the record contains sufficient evidence to support the exercise of jurisdiction, we need not reach the issue of whether the trial court should have continued the hearing to allow additional jurisdictional discovery.

DISPOSITION

The order quashing service of summons on Menorca is reversed. San Pedro's request for judicial notice is denied. San Pedro is to recover his costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

GOETHALS, J.